

1. Did claimant sustain personal injury by accident on October 2, 2001, arising out of and in the course of his employment with respondent?
2. Is claimant's current need for medical treatment causally related to his alleged work-related injury?
3. Did claimant provide respondent with timely notice of his work-related injury?
4. Did claimant serve respondent with timely written claim?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board (Board) finds that the preliminary hearing Order entered by the ALJ should be affirmed.

Claimant worked as a seasonal laborer for the respondent, a country club and golf course. On October 2, 2001, while lifting a jug containing water and ice, he felt his back pop. Claimant was able to complete his work day but the next morning awoke to severe back pain. Claimant telephoned respondent to report that he was not able to come in to work. He spoke with a Mr. John Lee. Claimant told Mr. Lee that he had injured his back lifting the water jug and would not be coming in to work. Mr. Lee said that he would tell the supervisor, Chad Stearns.

Mr. Lee, who was a full time employee of respondent, often directed claimant's work. Claimant considered Mr. Lee to be, "a boss." But Mr. Lee was not a supervisor nor was he someone respondent had designated to accept reports of accidents. As such, Mr. Lee was a co-worker of claimant. Claimant understood that his direct supervisor was the assistant superintendent, Dave Russell, and that the superintendent was Chad Stearns. Claimant did not return to work nor did he discuss his accident or injury with either Mr. Russell or Mr. Stearns until Friday, October 5, 2001, when claimant went in to pick up his pay check. At that time claimant saw Mr. Stearns and told him his back was still hurting. However, claimant either did not specifically describe his back pain as work-related or Mr. Stearns misunderstood what claimant was saying. The conversation took place while Mr. Stearns was passing by claimant and was more in the context of casual conversation rather than a formal report of injury by a worker to his supervisor. Claimant did not request medical treatment at that time nor did he make it clear to Mr. Stearns that he was reporting a work-related injury.

The first time that respondent admits receiving notice of accidental injury is on November 5, 2001. At that time claimant asked for a referral to a doctor. As claimant's November 5, 2001 conversation with Mr. Stearns occurred within seventy-five (75) days of his October 2, 2001 accident, this notice was timely as just cause existed for extending claimant's time for giving notice from ten (10) to seventy-five (75) days.<sup>1</sup> Factors contributing to this finding of just cause include; claimant's direct supervisor appears to have been unavailable when claimant called in on October 3 or 4 to report his accident, claimant considered Mr. Lee to be a "boss," and Mr. Lee said he would pass the information on to Mr. Stearns. Furthermore, claimant had not been instructed how to

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<sup>1</sup> K.S.A. 44-520.

report a work-related accident and his limited reading ability would make the posting of such instructions of little benefit to claimant.

Claimant's written claim was served upon respondent more than two hundred (200) days but less than one (1) year from his date of accident.<sup>2</sup> Nevertheless, this written claim was timely because respondent failed to file an Employers Report of Accident, thereby extending the time for serving written claim to one (1) year.<sup>3</sup> After his October 2, 2001 accident, claimant was unable to work the rest of that week. He missed work on October 3, 4 and 5, as well as the following weeks. Accordingly, the injury was ". . . sufficient wholly or partially to incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which such injuries were sustained."<sup>4</sup>

Claimant first sought treatment on his own at the Hunter Health Clinic on October 4, 2001 and thereafter returned for followup treatment on several occasions, including October 9, 23, 29 and November 2, 2001. Those records reflect that claimant's back injury was of recent onset and was work-related. "Left Hip pain 3 days; Left leg pain; back; Left thigh; back, Left knee & all way down into foot. Acute onset. Worsening over last 3 days."<sup>5</sup> "F/U sprained back working at country club - lifting water jug heard a pop."<sup>6</sup>

The Board agrees with the finding by the ALJ that claimant's need for treatment for his low back condition in October and November 2001 was as a result of an October 2, 2001 accident and injury at work and not as a direct and natural consequence of claimant's November 17, 1999 automobile accident. Claimant's low back injury may have been an aggravation of a preexisting condition, but there was clearly an acute exacerbation on October 2, 2001. Likewise, claimant's current need for treatment is more likely due to the October 2, 2001 accident at work rather than the November 17, 1999 automobile accident.

**WHEREFORE**, the December 30, 2002 Preliminary Hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes is affirmed.

**IT IS SO ORDERED.**

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<sup>2</sup> K.S.A. 44-520a.

<sup>3</sup> K.S.A. 44-557(c).

<sup>4</sup> K.S.A. 44-557(a).

<sup>5</sup> P.H. Trans., Cl. Ex. 1 Hunter Health Clinic progress note dated 10/4/01.

<sup>6</sup> P.H. Trans., Cl. Ex. 1 Hunter Health Clinic progress note dated 10/23/01.

Dated this \_\_\_\_\_ day of April 2003.

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BOARD MEMBER

c: William L. Townsley, Attorney for Claimant  
Vincent A. Burnett, Attorney for Respondent and Insurance Carrier  
Nelsonna Potts Barnes, Administrative Law Judge  
Director, Division of Workers Compensation